IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

JUDGMENT.

Puranmal vs. Roda & ors.

S.B. Civil Second Appeal No. 28/1990 against the judgment and decree dated 20.8.1987 passed by the learned Addl. District & Sessions Judge, Bhilwara in Civil Appeal No.77/86.

Date of Judgment: April 10, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Rameshwar Chauhan for the appellants.
Mr. Mohd. Aslam for Mr. Manish Shishodia for the respondent no.1.

BY THE COURT:

The plaintiff's appeal is against the judgment and decree of the trial court dated 8.9.1982 passed in Civil Original Suit No.52/75 as well as against the judgment and decree dated 20.8.1987 passed by the court of Addl.District Judge,Bhilwara in Civil Appeal Decree No.77/86. The plaintiff's suit was dismissed by the trial court and the appeal against the judgment and decree of the trial court was dismissed by the appellate court. Hence this second appeal.

Brief facts of the case are that the plaintiff filed the suit by describing the suit for recovery of Rs.3121/-.In the plaint, the plaintiff

stated that he gave bid in auction conducted by the Sarpanch of the Gram Panchayat of Village Potala on 24.10.1973. The plaintiff gave the bid under the belief that the said piece of land belongs to the Gram Panchayat. His bid of Rs.2750/- was accepted by the Gram Panchayat but according to the plaintiff himself, he deposited the balance amount of Rs.2475/- on persuasion of defendant no.1 Sarpanch. Not only this when he came to know that the land in question is not belonging to the Gram Panchayat, the plaintiff gave notice to defendant no.1 on 1.2.1974 stating therein that the action of auctioning the plot was false and forged. The plaintiff also admitted that he found that the plot does not belong to the Gram Panchayat and in fact it is in possession of defendant No.3 Roda. Several allegations have been levelled against defendant no.1-the Sarpanch of the Gram Panchayat for this transaction in the plaint itself and thereafter, the plaintiff in para no.12 of the plaint very specifically stated that defendant no.3 is in possession of the suit property and not only this that he is in possession of the suit property but he is in possession of the suit property since the time of his forefather. Obviously because of the reasons mentioned above, the plaintiff filed the suit for recovery of Rs.3021/- against defendant nos.1 and 2 only, though he impleaded defendant no.3 as party. In the alternative the plaintiff also prayed that in case the court finds it just and proper then he may be given possession of the suit property. The

plaintiff's suit was contested by the defendants and when a question of limitation was raised before the trial court, the trial court dismissed the suit of the plaintiff on the ground of limitation by judgment and decree dated 8.3.1976. The plaintiff preferred appeal No.20/76 (39/76) which was allowed by the first appellate court by judgment and decree dated 12.10.1979 and the appellate court reversed the finding of the trial court on the question of limitation and remanded the matter to the trial court for deciding the suit in accordance with law. It will be worthwhile to mention here that the appellate court by order 12.10.1979 held that the suit against defendant no.3 alone is within period of limitation and, therefore, the suit against defendant nos. 1 and 2 -the Gram Panchayat and the District Collector,Bhilwara shall remain dismissed.

In the trial court, an application was submitted by the plaintiff under Order 23 Rule 1(3) C.P.C. whereas defendant no.3 submitted an application under Order 15 Rule 2,C.P.C. on 10.7.1981. The plaintiff prayed that the plaintiff be permitted to withdraw the suit so that he may file proper suit so as to seek relief against defendant no.3 also. Defendant no.3 prayed that since no relief has been claimed against defendant no.3, therefore, the suit of the plaintiff may be dismissed against him also. The trial court decided both the applications by order (judgment and decree) dated 8.9.1982 and held that the plaintiff cannot be granted permission to withdraw the suit with permission to file fresh

suit. The trial court also held that in view of the fact that no relief has been claimed against defendant no.3 by plaintiff in the suit, therefore, the suit of the plaintiff deserves to be dismissed. Hence dismissed. As is apparent from the facts, no question on merit was decided by the trial court, still the decree was drawn in pursuance of the order dated 8.9.1982 and, therefore, the regular first appeal was preferred by the plaintiff to challenge the said judgment and decree dated 8.9.1982 of the trial court. The plaintiff-appellant's appeal was dismissed by the first appellate court by judgment and decree dated 20.8.1987.

The learned counsel for the appellant vehemently submitted that it is true that the plaintiff inadvertently did not seek relief against defendant no.3 in the suit but the plaintiff submitted an application for amendment on 25.4.1980 before the trial court so as to claim relief against defendant no.3. That application was illegally dismissed by the trial court vide order dated 19.12.1980 and further the trial court committed error of law in dismissing the suit of the plaintiff on the application filed by defendant no.3 under Order 15 Rule 2 C.P.C. on the ground that no relief has been claimed by the plaintiff against defendant no.3. The plaintiff tried to incorporate the relief of possession in the suit by moving application under Order 6 Rule 17,C.P.C. which was rejected by the trial court then the trial court should have allowed the appellant's application under Order 23 Rule 1(3)

C.P.C. because of the order of the trial court dated 19.12.1980 and 8.9.1982, the plaintiff has been left remedy-less and thereby the courts below have committed error of law.

The learned counsel for the respondent-defendant no.3 pointed that the plaintiff consciously filed the suit against defendant no.1 and 2 only for recovery of the amount and in the plaint he specifically admitted that defendant no.3 is in possession of the suit property and that possession was so long that it is continuing from the time of forefather of defendant not.3. The plaintiff further admitted that all the proceedings of auction of plot by the Gram Panchayat were farce and even the plaintiff deposited the amount because of the undue influence exerted by defendant no.1. The plaintiff cannot withdraw his own admissions and allowing the application under Order 6 Rule 17, C.P.C., would have permitted the plaintiff to withdraw of the admissions of facts and the admissions of the plaintiff in favour of defendant no.3 dis-entitles the plaintiff from seeking any relief against the defendant from the court of law. The plaintiff once alleged that the alleged action by the Gram Panchayat was unauthorised, he cannot plead that the said action was legal. The plaintiff once admitted that he deposited the cost of the plot because of undue influence of defendant no.1, he cannot plead that he deposited the amount to purchase the plot and lastly and which destroys the claim of the plaintiff is his

admission that defendant was in possession of the suit property since the time of his forefather.

I considered the submissions of the learned counsel for the parties and perused the record.

The plaintiff in his plaint clearly pleaded all the facts which dis-entitles the plaintiff from claiming the relief of possession of the suit property from defendant no.3 and the plaintiff could not have been permitted to withdraw his admission made in the plaint admitting the old possession of the defendant no.3 and he could not have withdrawn his admission about the illegal proceedings conducted by defendant nos. 1 and 2 against whom the plaintiff's suit was dismissed by the trial court and dismissal was upheld by the appellate court and appellate court's decree was not challenged by the plaintiff.

In view of the above, the substantial question of law framed by this Court on 27.8.1990 is decided in a manner that the trial court had not committed any error of law in dismissing the application filed under Order 6 Rule 17 C.P.C. by the plaintiff and also has not committed error of law in dismissing the suit of the plaintiff.

At this place it will be worthwhile to mention here that one application was submitted by the appellant-plaintiff under Order 41 Rule 27,C.P.C. and by this application, the appellant-plaintiff wants to place on record the certified copy of the judgment of the court of the District

Judge, Bhilwara dated 3.10.1980 passed in Civil Appeal No.113/78. It appears from the said judgment that defendant no.3-respondent Roda filed one suit for injunction against the Gram Panchayat and the District Collector. The learned counsel for the respondent submitted that though defendant-respondent's Roda's suit was dismissed by the trial court and the dismissal was upheld by the appellate court but in the judgment, defendant no.3's possession was recognised. It is also submitted that the judgment of the appellate court dated 3.10.1980 is absolutely irrelevant because of the reason that even on the basis of said judgment, the appellant-plaintiff cannot claim any relief against defendant-respondent Roda.

Since the plaintiff's own case and admission is that defendant no.3 is in possession of the suit property since the time of his forefather and dismissal of his suit against the said parties who are now not party in the present litigation is of no consequence.

In view of the above, the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

mlt.